



March 18, 2005

ENGROSSED SENATE BILL No. 446

DIGEST OF SB 446 (Updated March 16, 2005 4:51 pm - DI 73)

Citations Affected: IC 8-1.5; IC 13-26; IC 36-1; IC 36-2; IC 36-3; IC 36-9; IC 36-11.

Synopsis: Local government. Provides that storm water management district fees constitute liens. Sets forth the procedures by which: (1) a lien attaches and is enforced; and (2) payment of fees is enforced. Conforms the lien procedure for regional sewer districts with the lien procedure for municipal sewers. Prohibits a regional sewage district from requiring a property owner to connect to the district's sewer system if the property owner is already connected to a sewer system that was approved by a state governmental entity. Provides that: (1) if a campground elects to be billed for sewage service by use of a meter, the rate charged by a district board for the metered sewage service may not exceed the rate charged to residential customers for equivalent usage; and (2) if a campground does not install a meter and is billed for sewage service at a flat rate, each campsite at a campground may not equal more than 1/3 of one resident equivalent unit. Establishes a minimum monthly charge for campgrounds that elect to be billed by
(Continued next page)

Effective: January 1, 2005 (retroactive); upon passage; July 1, 2005.

Gard, Lanane
(HOUSE SPONSOR — WOLKINS)

January 13, 2005, read first time and referred to Committee on Judiciary.
February 10, 2005, amended, reported favorably — Do Pass.
February 15, 2005, read second time, amended, ordered engrossed.
February 16, 2005, engrossed.
February 17, 2005, read third time, passed. Yeas 45, nays 4.

HOUSE ACTION

March 8, 2005, read first time and referred to Committee on Local Government.
March 17, 2005, amended, reported — Do Pass.

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use of a meter. Allows a campground to file with the Indiana utility regulatory commission a request for review of a disputed matter with a district board to be conducted by the commission's appeals division. Provides that if a condition that exists on real property and that violates a local ordinance is cleaned up by the local unit, a lien attaches to the property for the cost of the cleanup when the lien is recorded. Provides that a bill for cleanup related to a violation of a local ordinance is delinquent 30 days after the date of issuance of the bill. Provides procedures for a municipal corporation to follow relating to the collection of fees and penalties, and recording and release of liens. Provides that the amount of a lien shall be placed on the tax duplicate. Provides that if a county recorder records a copy of a mortgage or an instrument, the copy has the same effect as if the original document had been recorded. Provides that liens for taxes levied by a consolidated city are perfected when evidenced on the tax duplicate.

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March 18, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 446

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-1.5-5-29 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 29. (a) Subsections (c), (d), and (e) do not apply to a
4 city that before January 1, 2005, adopted an ordinance establishing
5 procedures for the collection of unpaid user fees under this chapter
6 through the enforcement of a lien.**
7 **(b) Fees assessed against real property under this chapter
8 constitute a lien against the property assessed. The lien is superior
9 to all other liens except tax liens. Except as provided in subsections
10 (c) and (d), the lien attaches when notice of the lien is filed in the
11 county recorder's office under section 30 of this chapter.**
12 **(c) A fee is not enforceable as a lien against a subsequent owner
13 of property unless the lien for the fee was recorded with the county
14 recorder before the conveyance to the subsequent owner. If
15 property is conveyed before a lien is filed, the department shall
16 notify the person who owned the property at the time the fee
17 became payable. The notice must inform the person that payment,**

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including penalty fees for delinquencies, is due not more than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(d) A lien attaches against real property occupied by someone other than the owner only if the department notifies the owner within twenty (20) days after the time the user fees became sixty (60) days delinquent. However, the department must give notice to the owner only if the owner has given the department written notice of the address to which to send notice.

(e) The department shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

SECTION 2. IC 8-1.5-5-30 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 30. (a) The board may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

(b) Except as provided in subsection (k), the board shall enforce payment of fees imposed under this chapter. As often as the board determines necessary in a calendar year, the board shall prepare either of the following:

(1) A list of the delinquent fees and penalties that are enforceable under this section. The list must include the following:

(A) The name of the owner of each lot or parcel of real property on which fees are delinquent.

(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(c) An officer of the board shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in

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1 accordance with the fee schedule established in IC 36-2-7-10. The
 2 officer shall mail by certified mail, or by another delivery service
 3 providing proof of delivery, to each property owner on the list or
 4 on an individual instrument a notice stating that a lien against the
 5 owner's property has been recorded. A service charge of five
 6 dollars (\$5), which is in addition to the recording fee charged
 7 under this subsection and under subsection (e), shall be added to
 8 each delinquent fee that is recorded.

9 (d) Using the lists and instruments prepared under subsection
 10 (b) and recorded under subsection (c), the board shall, not later
 11 than ten (10) days after the list or each individual instrument is
 12 recorded under subsection (c), certify to the county auditor a list
 13 of the liens that remain unpaid for collection in the next May. The
 14 county and its officers and employees are not liable for any
 15 material error in the information on this list.

16 (e) The board shall release any recorded lien when the
 17 delinquent fees, penalties, service charges, and recording fees have
 18 been fully paid. The county recorder shall charge a fee for
 19 releasing the lien in accordance with IC 36-2-7-10.

20 (f) Upon receipt of the list under subsection (c), the county
 21 auditor of each county shall add a fifteen dollar (\$15) certification
 22 fee for each lot or parcel of real property on which fees are
 23 delinquent. The fee is in addition to all other fees and charges. The
 24 county auditor shall immediately enter on the tax duplicate for the
 25 district the delinquent fees, penalties, service charges, recording
 26 fees, and certification fees, which are due not later than the due
 27 date of the next May installment of property taxes. The county
 28 treasurer shall include any unpaid charges for the delinquent fee,
 29 penalty, service charge, recording fee, and certification fee to the
 30 owner or owners of each lot or parcel of property, at the time the
 31 next cycle's property tax installment is billed.

32 (g) After certification of liens under subsection (d), the board
 33 may not collect or accept delinquent fees, penalties, service
 34 charges, recording fees, or certification fees from property owners
 35 whose property has been certified to the county auditor.

36 (h) If a delinquent fee, penalty, service charge, recording fee,
 37 and certification fee are not paid, they shall be collected by the
 38 county treasurer in the same way that delinquent property taxes
 39 are collected.

40 (i) At the time of each semiannual tax settlement, the county
 41 treasurer shall certify to the county auditor all fees, charges, and
 42 penalties that have been collected. The county auditor shall deduct

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the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the district. The county treasurer shall retain the service charges and certification fees that have been collected and shall deposit them in the county general fund.

(j) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 29(e) of this chapter, files a verified demand with the county auditor.

(k) A board may write off a fee or penalty under subsection (a) that is less than forty dollars (\$40).

SECTION 3. IC 8-1.5-5-31 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 31. (a) A district may foreclose a lien established by this chapter in order to collect fees and penalties. The district shall recover the amount of the fees and penalties, and a reasonable attorney's fee. The court shall order the sale to be made without relief from valuation or appraisal laws.**

(b) Except as otherwise provided by this chapter, actions under this chapter are subject to the general statutes regarding municipal public improvement assessments.

SECTION 4. IC 13-26-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 2. A district may do the following:**

- (1) Sue or be sued.
- (2) Make contracts in the exercise of the rights, powers, and duties conferred upon the district.
- (3) Adopt and alter a seal and use the seal by causing the seal to be impressed, affixed, reproduced, or otherwise used. However, the failure to affix a seal does not affect the validity of an instrument.
- (4) Adopt, amend, and repeal the following:
 - (A) Bylaws for the administration of the district's affairs.
 - (B) Rules and regulations for the following:
 - (i) The control of the administration and operation of the district's service and facilities.
 - (ii) The exercise of all of the district's rights of ownership.
- (5) Construct, acquire, lease, operate, or manage works and obtain rights, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property, whether real, personal, or mixed, of a person or an eligible entity.
- (6) Assume in whole or in part any liability or obligation of:

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- 1 (A) a person;
 2 (B) a nonprofit water, sewage, or solid waste project system;
 3 or
 4 (C) an eligible entity;
 5 including a pledge of part or all of the net revenues of a works to
 6 the debt service on outstanding bonds of an entity in whole or in
 7 part in the district and including a right on the part of the district
 8 to indemnify and protect a contracting party from loss or liability
 9 by reason of the failure of the district to perform an agreement
 10 assumed by the district or to act or discharge an obligation.
 11 (7) Fix, alter, charge, and collect reasonable rates and other
 12 charges in the area served by the district's facilities to every
 13 person whose premises are, whether directly or indirectly,
 14 supplied with water or provided with sewage or solid waste
 15 services by the facilities for the purpose of providing for the
 16 following:
 17 (A) The payment of the expenses of the district.
 18 (B) The construction, acquisition, improvement, extension,
 19 repair, maintenance, and operation of the district's facilities
 20 and properties.
 21 (C) The payment of principal or interest on the district's
 22 obligations.
 23 (D) To fulfill the terms of agreements made with:
 24 (i) the purchasers or holders of any obligations; or
 25 (ii) a person or an eligible entity.
 26 (8) Except as provided in section 2.5 of this chapter, require
 27 connection to the district's sewer system of property producing
 28 sewage or similar waste and require the discontinuance of use of
 29 privies, cesspools, septic tanks, and similar structures if:
 30 (A) there is an available sanitary sewer within three hundred
 31 (300) feet of the property line; and
 32 (B) the district has given written notice by certified mail to the
 33 property owner at the address of the property at least ninety
 34 (90) days before a date for connection to be stated in the
 35 notice.
 36 **However, a district may not require a property owner to**
 37 **connect to the district's sewer system if the property owner is**
 38 **already connected to a sewer system that was approved by a**
 39 **state governmental entity.**
 40 (9) Provide by ordinance for reasonable penalties for failure to
 41 connect and also apply to the circuit or superior court of the
 42 county in which the property is located for an order to force

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connection, with the cost of the action, including reasonable attorney's fees of the district, to be assessed by the court against the property owner in the action.

(10) Refuse the services of the district's facilities if the rates or other charges are not paid by the user.

(11) Control and supervise all property, works, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to the district.

(12) Construct, acquire by purchase or otherwise, operate, lease, preserve, and maintain works considered necessary to accomplish the purposes of the district's establishment within or outside the district and enter into contracts for the operation of works owned, leased, or held by another entity, whether public or private.

(13) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor, use, and sell interests in real and personal property or franchises within or outside the district for:

(A) the location or protection of works;

(B) the relocation of buildings, structures, and improvements situated on land required by the district or for any other necessary purpose; or

(C) obtaining or storing material to be used in constructing and maintaining the works.

(14) Upon consent of two-thirds (2/3) of the members of the board, merge or combine with another district into a single district on terms so that the surviving district:

(A) is possessed of all rights, franchises, and authority of the constituent districts; and

(B) is subject to all the liabilities, obligations, and duties of each of the constituent districts, with all rights of creditors of the constituent districts being preserved unimpaired.

(15) Provide by agreement with another eligible entity for the joint construction of works the district is authorized to construct if the construction is for the district's own benefit and that of the other entity. For this purpose the cooperating entities may jointly appropriate land either within or outside their respective borders if all subsequent proceedings, actions, powers, liabilities, rights, and duties are those set forth by statute.

(16) Enter into contracts with a person, an eligible entity, the state, or the United States to provide services to the contracting party for any of the following:

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- 1 (A) The distribution or purification of water.
 2 (B) The collection or treatment of sanitary sewage.
 3 (C) The collection, disposal, or recovery of solid waste.
 4 (17) Make provision for, contract for, or sell the district's
 5 byproducts or waste.
 6 (18) Exercise the power of eminent domain.
 7 (19) Remove or change the location of a fence, building, railroad,
 8 canal, or other structure or improvement located within or outside
 9 the district. If:
 10 (A) it is not feasible or economical to move the building,
 11 structure, or improvement situated in or upon land acquired;
 12 and
 13 (B) the cost is determined by the board to be less than that of
 14 purchase or condemnation;
 15 the district may acquire land and construct, acquire, or install
 16 buildings, structures, or improvements similar in purpose to be
 17 exchanged for the buildings, structures, or improvements under
 18 contracts entered into between the owner and the district.
 19 (20) Employ consulting engineers, superintendents, managers,
 20 and other engineering, construction, and accounting experts,
 21 attorneys, bond counsel, employees, and agents that are necessary
 22 for the accomplishment of the district's purpose and fix their
 23 compensation.
 24 (21) Procure insurance against loss to the district by reason of
 25 damages to the district's properties, works, or improvements
 26 resulting from fire, theft, accident, or other casualty or because of
 27 the liability of the district for damages to persons or property
 28 occurring in the operations of the district's works and
 29 improvements or the conduct of the district's activities.
 30 (22) Exercise the powers of the district without obtaining the
 31 consent of other eligible entities. However, the district shall:
 32 (A) restore or repair all public or private property damaged in
 33 carrying out the powers of the district and place the property
 34 in the property's original condition as nearly as practicable; or
 35 (B) pay adequate compensation for the property.
 36 (23) Dispose of, by public or private sale or lease, real or personal
 37 property determined by the board to be no longer necessary or
 38 needed for the operation or purposes of the district.
 39 SECTION 5. IC 13-26-11-2 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
 41 Sec. 2. (a) Except as provided in subsection (b), the rates or charges for
 42 a sewage works may be determined based on the following:

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- (1) A flat charge for each connection.
- (2) The amount of water used on the premises.
- (3) The number and size of water outlets on the premises.
- (4) The amount, strength, or character of sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Whether the property served has been or will be required to pay separately for the cost of any of the facilities of the works.
- (7) A combination of these or other factors that the board determines is necessary to establish nondiscriminatory, just, and equitable rates or charges.

(b) ~~This subsection applies only to a district in which a campground brought a legal action after January 1, 2000, and before April 1, 2003, against a board concerning sewage service billed at a flat rate. If a campground is billed for sewage service at a flat rate under subsection (a), the campground may instead elect to be billed for the sewage service under this subsection by installing, at the campground's expense, a meter to measure the actual amount of sewage discharged by the campground into the sewers. for one (1) year. The highest meter reading for a calendar week for the campground during the year shall be used to determine the resident equivalent units for the campground.~~
If a campground elects to be billed by use of a meter:

- (1) the rate charged by a board for the metered sewage service may not exceed the rate charged to residential customers for equivalent usage; and
- (2) the amount charged by a board for the campground's monthly sewage service for the period beginning September 1 and ending May 31 must be equal to the greater of:
 - (A) the actual amount that would be charged for the sewage discharged during the month by the campground as measured by the meter; or
 - (B) the lowest monthly charge paid by the campground for sewage service during the previous period beginning June 1 and ending August 31.

(c) **If a campground does not install a meter under subsection (b) and is billed for sewage service at a flat rate under subsection (a), for a calendar year beginning after December 31, 2004, each campsite at the campground may not equal more than one-third (1/3) of one (1) resident equivalent unit.** The basic monthly charge for the campground's sewage service must be equal to the number of the campground's resident equivalent units multiplied by the rate charged by the board for a resident unit.

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(d) The board may impose additional charges on a campground under ~~this subsection~~ **subsections (b) and (c)** if the board incurs additional costs that are caused by any unique factors that apply to providing sewage service for the campground, including, but not limited to:

(1) the installation of:

(A) oversized pipe; or

(B) any other unique equipment;

necessary to provide sewage service for the campground; and

(2) ~~excessive concentrations of~~ biochemical oxygen demand

(BOD) **that exceed federal pollutant standards.**

SECTION 6. IC 13-26-11-2.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 2.1. (a) As used in this section, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.**

(b) This section applies to an owner or operator of a campground described in section 2(b) or 2(c) of this chapter who disputes:

(1) that the campground is being billed at rates charged to residential customers for equivalent usage as required by section 2(b)(1) of this chapter;

(2) the number of resident equivalent units determined for the campground under section 2(c) of this chapter; or

(3) that any additional charges imposed on the campground under section 2(d) of this chapter are reasonable or nondiscriminatory.

(c) If an owner or operator:

(1) makes a good faith attempt to resolve a disputed matter described in subsection (b)(1) through (b)(3) through:

(A) any grievance or complaint procedure prescribed by the board; or

(B) other negotiations with the board; and

(2) is dissatisfied with the board's proposed disposition of the matter;

the owner or operator may file with the commission a written request for review of the disputed matter and the board's proposed disposition of the matter to be conducted by the commission's appeals division established under IC 8-1-2-34.5(b). The owner or operator must file a request under this section with the commission and the board not later than seven (7) days after receiving notice of the board's proposed disposition of the matter.

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(d) The commission's appeals division shall provide an informal review of the disputed matter. The review must include a prompt and thorough investigation of the dispute. Upon request by either party, or on the division's own motion, the division shall require the parties to attend a conference on the matter at a date, time, and place determined by the division.

(e) In any case in which the basic monthly charge for a campground's sewage service is in dispute, the owner or operator shall pay, on any disputed bill issued while a review under this section is pending, the basic monthly charge billed during the year immediately preceding the year in which the first disputed bill is issued. If the basic monthly charge paid while the review is pending exceeds any monthly charge determined by the commission in a decision issued under subsection (f), the board shall refund or credit the excess amount paid to the owner or operator. If the basic monthly charge paid while the review is pending is less than any monthly charge determined by the appeals division or commission in a decision issued under subsection (f), the owner or operator shall pay the board the difference owed.

(f) After conducting the review required under subsection (d), the appeals division shall issue a written decision resolving the disputed matter. The division shall send a copy of the decision to:

- (1) the owner or operator of the campground; and
- (2) the board;

by United States mail. Not later than seven (7) days after receiving the written decision of the appeals division, either party may make a written request for the dispute to be formally docketed as a proceeding before the commission. Subject to the right of either party to an appeal under IC 8-1-3, the decision of the commission is final.

(g) The commission shall maintain a record of all requests for a review made under this section. The record must include:

- (1) a copy of the appeals division's and commission's decision under subsection (f) for each dispute filed; and
- (2) any other documents filed with the appeals division or commission under this section.

The record must be made available for public inspection and copying in the office of the commission during regular business hours under IC 5-14-3.

(h) The right of a campground owner or operator to request a review under this section is in addition to the right of the campground owner or operator to file a petition under section 15

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of this chapter as a freeholder of the district.

(i) The commission may adopt rules under IC 4-22-2 to implement this section.

SECTION 7. IC 13-26-14-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. Rates, fees, or charges made, assessed, or established by the district are a lien on a lot, parcel of land, or building that is connected with or uses the works of the district in the manner established under IC 36-9-23. The liens:

(1) attach;

(2) are recorded;

(3) are subject to the same penalties, interest, and reasonable attorney's fees on recovery; and

(4) shall be collected and enforced;

in substantially the same manner as provided in IC 36-9-23-31 through IC 36-9-23-32.

SECTION 8. IC 36-1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) If a condition violating an ordinance of a municipal corporation exists on real property, officers of the municipal corporation may enter onto that property and take appropriate action to bring the property into compliance with the ordinance. However, before action to bring compliance may be taken, all persons holding a substantial interest in the property must be given a reasonable opportunity of at least ten (10) days but not more than sixty (60) days to bring the property into compliance. If the municipal corporation takes action to bring compliance, the expenses incurred by the municipal corporation to bring compliance constitute a lien against the property. **The lien attaches when notice of the lien is recorded in the office of the county recorder in which the property is located.** The lien is superior to all other liens except liens for taxes, in an amount that does not exceed:

(1) two thousand five hundred dollars (\$2,500) for real property that:

(A) contains one (1) or more occupied or unoccupied single or double family dwellings or the appurtenances or additions to those dwellings; or

(B) is unimproved; or

(2) ten thousand dollars (\$10,000) for all other real property not described in subdivision (1).

(b) The municipal corporation may issue a bill to the owner of the real property for the costs incurred by the municipal corporation in bringing the property into compliance with the ordinance, including

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administrative costs and removal costs.

(c) If the owner of the real property fails to pay a bill issued under subsection (b), the municipal corporation may, after thirty (30) days, certify to the county auditor the amount of the bill, plus any additional administrative costs incurred in the certification. The auditor shall place the total amount certified on the tax duplicate for the property affected; and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation.

(c) A bill issued under subsection (b) is delinquent if the owner of the real property fails to pay the bill within thirty (30) days after the date of the issuance of the bill.

(d) Whenever a municipal corporation determines it necessary, the officer charged with the collection of fees and penalties for the municipal corporation shall prepare:

(1) a list of delinquent fees and penalties that are enforceable under this section, including:

(A) the name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent;

(B) a description of the premises, as shown on the records of the county auditor; and

(C) the amount of the delinquent fees and the penalty; or

(2) an instrument for each lot or parcel of real property on which the fees are delinquent.

(e) The officer shall record a copy of each list or each instrument with the county recorder, who shall charge a fee for recording the list or instrument under the fee schedule established in IC 36-2-7-10.

(f) The amount of a lien shall be placed on the tax duplicate by the auditor. The total amount, including any accrued interest, shall be collected in the same manner as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation.

(g) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before conveyance to the subsequent owner. If the property is conveyed before the lien is recorded, the municipal corporation shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not less than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of

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the notice, the amount due may be considered a bad debt loss.

(h) The municipal corporation shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a written demand from the purchaser or a representative of the title insurance company or the title insurance company's agent that issued a title insurance policy to the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

(i) The county auditor shall remove the fees, penalties, and service charges that were not recorded before a recorded conveyance to a subsequent owner upon receipt of a copy of the written demand under subsection (h).

SECTION 9. IC 36-2-11-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) This section does not apply to:

(1) an instrument executed before November 4, 1943;

(2) a judgment, order, or writ of a court;

(3) a will or death certificate; or

(4) an instrument executed or acknowledged outside Indiana.

(b) Whenever this section prescribes that the name of a person be printed, typewritten, or stamped immediately beneath ~~his~~ **the person's** signature, the signature must be written on the instrument, directly preceding the printed, typewritten, or stamped name, and may not be superimposed on that name so as to render either illegible. However, the instrument may be received for record if the name and signature are, in the discretion of the county recorder, placed on the instrument so as to render the connection between the two apparent.

(c) The recorder may receive for record an instrument only if:

(1) the name of each person who executed the instrument is legibly printed, typewritten, or stamped immediately beneath ~~his~~ **the person's** signature or the signature itself is printed, typewritten, or stamped;

(2) the name of each witness to the instrument is legibly printed, typewritten, or stamped immediately beneath ~~his~~ **the witness's** signature or the signature itself is printed, typewritten, or stamped;

(3) the name of each notary public whose signature appears on the instrument is legibly printed, typewritten, or stamped immediately

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beneath ~~his~~ **the notary's** signature or the signature itself is printed, typewritten, or stamped; and

(4) the name of each person who executed the instrument appears identically in the body of the instrument, in the acknowledgment or jurat, in ~~his~~ **the person's** signature, and beneath ~~his~~ **the person's** signature;

or if subsection (d) is complied with.

(d) The recorder may receive for record an instrument that does not comply with subsection (c) if:

(1) a printed or typewritten affidavit of a person with personal knowledge of the facts is recorded with the instrument;

(2) the affidavit complies with this section;

(3) the affidavit states the correct name of a person, if any, whose signature cannot be identified or whose name is not printed, typewritten, or stamped on the instrument as prescribed by this section; and

(4) when the instrument does not comply with subsection (c)(4), the affidavit states the correct name of the person and states that each of the names used in the instrument refers to the person.

(e) The recorder ~~may~~ **shall** record a document presented for recording or a copy produced by a photographic process of the document presented for recording if:

(1) the document complies with other statutory recording requirements; and

(2) the document or copy will produce a clear and unobstructed copy.

All copies accepted for recording shall be marked as copies by the recorder.

(f) An instrument, document, or copy received and recorded by a county recorder is conclusively presumed to comply with this section.

The copy has the same effect as if the original document had been recorded.

SECTION 10. IC 36-3-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Liens for taxes levied by the consolidated city are perfected when ~~certified to the auditor of the county.~~ **evidenced on the tax duplicate in the office of the treasurer of the county.**

(b) Liens created when the city enters upon property to make improvements to bring it into compliance with a city ordinance, and liens created upon failure to pay charges assessed by the city for services shall be certified to the auditor, after the adoption of a resolution confirming the incurred expense by the appropriate city

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department, board, or other agency. In addition, the resolution must state the name of the owner as it appears on the township assessor's record and a description of the property. ~~These liens are perfected when certified to the auditor.~~

(c) The amount of a ~~perfected~~ lien shall be placed on the tax duplicate by the auditor in the nature of a delinquent tax subject to enforcement and collection as otherwise provided under IC 6-1.1-22, IC 6-1.1-24, and IC 6-1.1-25. However, the amount of the lien is not considered a tax within the meaning of IC 6-1.1-21-2(b) and shall not be included as a part of either a total county tax levy under IC 6-1.1-21-2(g) or the tax liability of a taxpayer under IC 6-1.1-21-5 for purposes of the tax credit computations under IC 6-1.1-21-4 and IC 6-1.1-21-5.

SECTION 11. IC 36-9-23-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 32. (a) Fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not ~~less~~ **more** than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner only if the owner has given the general office of the utility written notice of the address to which his notice is to be sent.

(d) The municipality shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the

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1 purchaser as a user, lessee, or previous owner, and that the purchaser
2 has not been paid by the seller for the delinquent fees.

3 SECTION 12. IC 36-11-11-2 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. A district may
5 enforce delinquent fees and penalties in the manner described in
6 ~~IC 13-26-13~~. **IC 36-9-23.**

7 SECTION 13. THE FOLLOWING ARE REPEALED [EFFECTIVE
8 JULY 1, 2005]: IC 13-26-12; IC 13-26-13.

9 SECTION 14. **An emergency is declared for this act.**

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SENATE MOTION

Madam President: I move that Senator Lanane be added as second author of Senate Bill 446.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 446, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 12, delete "can be" and insert "is".

Page 2, line 41, after "mail" insert "**by certified mail, or by another delivery service providing proof of delivery,**".

Page 4, after line 17, begin a new paragraph and insert:

"SECTION 4. IC 13-26-14-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4. Rates, fees, or charges made, assessed, or established by the district are a lien on a lot, parcel of land, or building that is connected with or uses the works of the district in the manner established under IC 36-9-23. The liens:**

(1) attach;

(2) are recorded;

(3) are subject to the same penalties, interest, and reasonable attorney's fees on recovery; and

(4) shall be collected and enforced;

in substantially the same manner as provided in IC 36-9-23-31 through IC 36-9-23-32.

SECTION 5. IC 36-11-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. A district may enforce delinquent fees and penalties in the manner described in ~~IC 13-26-13~~. **IC 36-9-23.**

SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 13-26-12; IC 13-26-13."

and when so amended that said bill do pass.

(Reference is to SB 446 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 446 be amended to read as follows:

Page 1, line 15, delete "less" and insert "**more**".

Page 4, between lines 31 and 32, begin a new paragraph and insert:

"SECTION 5. IC 36-9-23-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 32. (a) Fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not ~~less~~ **more** than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner only if the owner has given the general office of the utility written notice of the address to which his notice is to be sent.

(d) The municipality shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees."

Renumber all SECTIONS consecutively.

(Reference is to SB 446 as printed February 11, 2005.)

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SENATE MOTION

Page 1, delete lines 1 through 8, begin a new paragraph and insert:
 "SECTION 1. IC 8-1.5-5-29 IS ADDED TO THE INDIANA CODE
 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 1, 2005]: **Sec. 29. (a) Subsections (c), (d), and (e) do not apply to a
 city that before January 1, 2005, adopted an ordinance establishing
 procedures for the collection of unpaid user fees under this chapter
 through the enforcement of a lien.**

**(b) Fees assessed against real property under this chapter
 constitute a lien against the property assessed. The lien is superior
 to all other liens except tax liens. Except as provided in subsections
 (c) and (d), the lien attaches when notice of the lien is filed in the
 county recorder's office under section 30 of this chapter."**

Page 1, line 9, delete "(b)" and insert "(c)".

Page 2, line 2, delete "(c)" and insert "(d)".

Page 2, line 8, delete "(d)" and insert "(e)".

(Reference is to SB 446 as printed February 11, 2005.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred Senate Bill 446, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 8, delete "29(d)" and insert "29(e)".

Page 4, between lines 21 and 22, begin a new paragraph and insert:

"SECTION 4. IC 13-26-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A district may do the following:

- (1) Sue or be sued.
- (2) Make contracts in the exercise of the rights, powers, and duties conferred upon the district.
- (3) Adopt and alter a seal and use the seal by causing the seal to be impressed, affixed, reproduced, or otherwise used. However, the failure to affix a seal does not affect the validity of an instrument.
- (4) Adopt, amend, and repeal the following:
 - (A) Bylaws for the administration of the district's affairs.
 - (B) Rules and regulations for the following:
 - (i) The control of the administration and operation of the district's service and facilities.
 - (ii) The exercise of all of the district's rights of ownership.
- (5) Construct, acquire, lease, operate, or manage works and obtain rights, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property, whether real, personal, or mixed, of a person or an eligible entity.
- (6) Assume in whole or in part any liability or obligation of:
 - (A) a person;
 - (B) a nonprofit water, sewage, or solid waste project system; or
 - (C) an eligible entity;
 including a pledge of part or all of the net revenues of a works to the debt service on outstanding bonds of an entity in whole or in part in the district and including a right on the part of the district to indemnify and protect a contracting party from loss or liability by reason of the failure of the district to perform an agreement assumed by the district or to act or discharge an obligation.
- (7) Fix, alter, charge, and collect reasonable rates and other charges in the area served by the district's facilities to every person whose premises are, whether directly or indirectly, supplied with water or provided with sewage or solid waste

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services by the facilities for the purpose of providing for the following:

- (A) The payment of the expenses of the district.
 - (B) The construction, acquisition, improvement, extension, repair, maintenance, and operation of the district's facilities and properties.
 - (C) The payment of principal or interest on the district's obligations.
 - (D) To fulfill the terms of agreements made with:
 - (i) the purchasers or holders of any obligations; or
 - (ii) a person or an eligible entity.
- (8) Except as provided in section 2.5 of this chapter, require connection to the district's sewer system of property producing sewage or similar waste and require the discontinuance of use of privies, cesspools, septic tanks, and similar structures if:
- (A) there is an available sanitary sewer within three hundred (300) feet of the property line; and
 - (B) the district has given written notice by certified mail to the property owner at the address of the property at least ninety (90) days before a date for connection to be stated in the notice.

However, a district may not require a property owner to connect to the district's sewer system if the property owner is already connected to a sewer system that was approved by a state governmental entity.

- (9) Provide by ordinance for reasonable penalties for failure to connect and also apply to the circuit or superior court of the county in which the property is located for an order to force connection, with the cost of the action, including reasonable attorney's fees of the district, to be assessed by the court against the property owner in the action.
- (10) Refuse the services of the district's facilities if the rates or other charges are not paid by the user.
- (11) Control and supervise all property, works, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to the district.
- (12) Construct, acquire by purchase or otherwise, operate, lease, preserve, and maintain works considered necessary to accomplish the purposes of the district's establishment within or outside the district and enter into contracts for the operation of works owned, leased, or held by another entity, whether public or private.

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(13) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor, use, and sell interests in real and personal property or franchises within or outside the district for:

- (A) the location or protection of works;
- (B) the relocation of buildings, structures, and improvements situated on land required by the district or for any other necessary purpose; or
- (C) obtaining or storing material to be used in constructing and maintaining the works.

(14) Upon consent of two-thirds (2/3) of the members of the board, merge or combine with another district into a single district on terms so that the surviving district:

- (A) is possessed of all rights, franchises, and authority of the constituent districts; and
- (B) is subject to all the liabilities, obligations, and duties of each of the constituent districts, with all rights of creditors of the constituent districts being preserved unimpaired.

(15) Provide by agreement with another eligible entity for the joint construction of works the district is authorized to construct if the construction is for the district's own benefit and that of the other entity. For this purpose the cooperating entities may jointly appropriate land either within or outside their respective borders if all subsequent proceedings, actions, powers, liabilities, rights, and duties are those set forth by statute.

(16) Enter into contracts with a person, an eligible entity, the state, or the United States to provide services to the contracting party for any of the following:

- (A) The distribution or purification of water.
- (B) The collection or treatment of sanitary sewage.
- (C) The collection, disposal, or recovery of solid waste.

(17) Make provision for, contract for, or sell the district's byproducts or waste.

(18) Exercise the power of eminent domain.

(19) Remove or change the location of a fence, building, railroad, canal, or other structure or improvement located within or outside the district. If:

- (A) it is not feasible or economical to move the building, structure, or improvement situated in or upon land acquired; and
- (B) the cost is determined by the board to be less than that of purchase or condemnation;

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the district may acquire land and construct, acquire, or install buildings, structures, or improvements similar in purpose to be exchanged for the buildings, structures, or improvements under contracts entered into between the owner and the district.

(20) Employ consulting engineers, superintendents, managers, and other engineering, construction, and accounting experts, attorneys, bond counsel, employees, and agents that are necessary for the accomplishment of the district's purpose and fix their compensation.

(21) Procure insurance against loss to the district by reason of damages to the district's properties, works, or improvements resulting from fire, theft, accident, or other casualty or because of the liability of the district for damages to persons or property occurring in the operations of the district's works and improvements or the conduct of the district's activities.

(22) Exercise the powers of the district without obtaining the consent of other eligible entities. However, the district shall:

(A) restore or repair all public or private property damaged in carrying out the powers of the district and place the property in the property's original condition as nearly as practicable; or

(B) pay adequate compensation for the property.

(23) Dispose of, by public or private sale or lease, real or personal property determined by the board to be no longer necessary or needed for the operation or purposes of the district.

SECTION 5. IC 13-26-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
Sec. 2. (a) Except as provided in subsection (b), the rates or charges for a sewage works may be determined based on the following:

(1) A flat charge for each connection.

(2) The amount of water used on the premises.

(3) The number and size of water outlets on the premises.

(4) The amount, strength, or character of sewage discharged into the sewers.

(5) The size of sewer connections.

(6) Whether the property served has been or will be required to pay separately for the cost of any of the facilities of the works.

(7) A combination of these or other factors that the board determines is necessary to establish nondiscriminatory, just, and equitable rates or charges.

(b) ~~This subsection applies only to a district in which a campground brought a legal action after January 1, 2000, and before April 1, 2003, against a board concerning sewage service billed at a flat rate. If a~~

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campground is billed for sewage service at a flat rate under subsection (a), the campground may instead elect to be billed for the sewage service under this subsection by installing, at the campground's expense, a meter to measure the actual amount of sewage discharged by the campground into the sewers. ~~for one (1) year. The highest meter reading for a calendar week for the campground during the year shall be used to determine the resident equivalent units for the campground.~~

If a campground elects to be billed by use of a meter:

(1) the rate charged by a board for the metered sewage service may not exceed the rate charged to residential customers for equivalent usage; and

(2) the amount charged by a board for the campground's monthly sewage service for the period beginning September 1 and ending May 31 must be equal to the greater of:

(A) the actual amount that would be charged for the sewage discharged during the month by the campground as measured by the meter; or

(B) the lowest monthly charge paid by the campground for sewage service during the previous period beginning June 1 and ending August 31.

(c) If a campground does not install a meter under subsection (b) and is billed for sewage service at a flat rate under subsection (a), for a calendar year beginning after December 31, 2004, each campsite at the campground may not equal more than one-third (1/3) of one (1) resident equivalent unit. The basic monthly charge for the campground's sewage service must be equal to the number of the campground's resident equivalent units multiplied by the rate charged by the board for a resident unit.

(d) The board may impose additional charges on a campground under ~~this subsection~~ **subsections (b) and (c)** if the board incurs additional costs that are caused by any unique factors that apply to providing sewage service for the campground, including, but not limited to:

(1) the installation of:

(A) oversized pipe; or

(B) any other unique equipment;

necessary to provide sewage service for the campground; and

(2) ~~excessive concentrations of~~ biochemical oxygen demand (BOD) **that exceed federal pollutant standards.**

SECTION 6. IC 13-26-11-2.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 2.1. (a) As**

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used in this section, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(b) This section applies to an owner or operator of a campground described in section 2(b) or 2(c) of this chapter who disputes:

- (1) that the campground is being billed at rates charged to residential customers for equivalent usage as required by section 2(b)(1) of this chapter;
- (2) the number of resident equivalent units determined for the campground under section 2(c) of this chapter; or
- (3) that any additional charges imposed on the campground under section 2(d) of this chapter are reasonable or nondiscriminatory.

(c) If an owner or operator:

- (1) makes a good faith attempt to resolve a disputed matter described in subsection (b)(1) through (b)(3) through:
 - (A) any grievance or complaint procedure prescribed by the board; or
 - (B) other negotiations with the board; and
- (2) is dissatisfied with the board's proposed disposition of the matter;

the owner or operator may file with the commission a written request for review of the disputed matter and the board's proposed disposition of the matter to be conducted by the commission's appeals division established under IC 8-1-2-34.5(b). The owner or operator must file a request under this section with the commission and the board not later than seven (7) days after receiving notice of the board's proposed disposition of the matter.

(d) The commission's appeals division shall provide an informal review of the disputed matter. The review must include a prompt and thorough investigation of the dispute. Upon request by either party, or on the division's own motion, the division shall require the parties to attend a conference on the matter at a date, time, and place determined by the division.

(e) In any case in which the basic monthly charge for a campground's sewage service is in dispute, the owner or operator shall pay, on any disputed bill issued while a review under this section is pending, the basic monthly charge billed during the year immediately preceding the year in which the first disputed bill is issued. If the basic monthly charge paid while the review is pending exceeds any monthly charge determined by the commission in a decision issued under subsection (f), the board shall refund or

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credit the excess amount paid to the owner or operator. If the basic monthly charge paid while the review is pending is less than any monthly charge determined by the appeals division or commission in a decision issued under subsection (f), the owner or operator shall pay the board the difference owed.

(f) After conducting the review required under subsection (d), the appeals division shall issue a written decision resolving the disputed matter. The division shall send a copy of the decision to:

- (1) the owner or operator of the campground; and
- (2) the board;

by United States mail. Not later than seven (7) days after receiving the written decision of the appeals division, either party may make a written request for the dispute to be formally docketed as a proceeding before the commission. Subject to the right of either party to an appeal under IC 8-1-3, the decision of the commission is final.

(g) The commission shall maintain a record of all requests for a review made under this section. The record must include:

- (1) a copy of the appeals division's and commission's decision under subsection (f) for each dispute filed; and
- (2) any other documents filed with the appeals division or commission under this section.

The record must be made available for public inspection and copying in the office of the commission during regular business hours under IC 5-14-3.

(h) The right of a campground owner or operator to request a review under this section is in addition to the right of the campground owner or operator to file a petition under section 15 of this chapter as a freeholder of the district.

(i) The commission may adopt rules under IC 4-22-2 to implement this section."

Page 4, between lines 34 and 35, begin a new paragraph and insert:

"SECTION 8. IC 36-1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) If a condition violating an ordinance of a municipal corporation exists on real property, officers of the municipal corporation may enter onto that property and take appropriate action to bring the property into compliance with the ordinance. However, before action to bring compliance may be taken, all persons holding a substantial interest in the property must be given a reasonable opportunity of at least ten (10) days but not more than sixty (60) days to bring the property into compliance. If the municipal corporation takes action to bring

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compliance, the expenses incurred by the municipal corporation to bring compliance constitute a lien against the property. **The lien attaches when notice of the lien is recorded in the office of the county recorder in which the property is located.** The lien is superior to all other liens except liens for taxes, in an amount that does not exceed:

(1) two thousand five hundred dollars (\$2,500) for real property that:

(A) contains one (1) or more occupied or unoccupied single or double family dwellings or the appurtenances or additions to those dwellings; or

(B) is unimproved; or

(2) ten thousand dollars (\$10,000) for all other real property not described in subdivision (1).

(b) The municipal corporation may issue a bill to the owner of the real property for the costs incurred by the municipal corporation in bringing the property into compliance with the ordinance, including administrative costs and removal costs.

(c) If the owner of the real property fails to pay a bill issued under subsection (b); the municipal corporation may, after thirty (30) days, certify to the county auditor the amount of the bill, plus any additional administrative costs incurred in the certification. The auditor shall place the total amount certified on the tax duplicate for the property affected; and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation.

(c) A bill issued under subsection (b) is delinquent if the owner of the real property fails to pay the bill within thirty (30) days after the date of the issuance of the bill.

(d) Whenever a municipal corporation determines it necessary, the officer charged with the collection of fees and penalties for the municipal corporation shall prepare:

(1) a list of delinquent fees and penalties that are enforceable under this section, including:

(A) the name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent;

(B) a description of the premises, as shown on the records of the county auditor; and

(C) the amount of the delinquent fees and the penalty; or

(2) an instrument for each lot or parcel of real property on which the fees are delinquent.

(e) The officer shall record a copy of each list or each

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instrument with the county recorder, who shall charge a fee for recording the list or instrument under the fee schedule established in IC 36-2-7-10.

(f) The amount of a lien shall be placed on the tax duplicate by the auditor. The total amount, including any accrued interest, shall be collected in the same manner as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation.

(g) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before conveyance to the subsequent owner. If the property is conveyed before the lien is recorded, the municipal corporation shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not less than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be considered a bad debt loss.

(h) The municipal corporation shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a written demand from the purchaser or a representative of the title insurance company or the title insurance company's agent that issued a title insurance policy to the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

(i) The county auditor shall remove the fees, penalties, and service charges that were not recorded before a recorded conveyance to a subsequent owner upon receipt of a copy of the written demand under subsection (h).

SECTION 9. IC 36-2-11-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) This section does not apply to:

- (1) an instrument executed before November 4, 1943;
- (2) a judgment, order, or writ of a court;
- (3) a will or death certificate; or
- (4) an instrument executed or acknowledged outside Indiana.

(b) Whenever this section prescribes that the name of a person be printed, typewritten, or stamped immediately beneath ~~his~~ **the person's**

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signature, the signature must be written on the instrument, directly preceding the printed, typewritten, or stamped name, and may not be superimposed on that name so as to render either illegible. However, the instrument may be received for record if the name and signature are, in the discretion of the county recorder, placed on the instrument so as to render the connection between the two apparent.

(c) The recorder may receive for record an instrument only if:

- (1) the name of each person who executed the instrument is legibly printed, typewritten, or stamped immediately beneath ~~his~~ **the person's** signature or the signature itself is printed, typewritten, or stamped;
- (2) the name of each witness to the instrument is legibly printed, typewritten, or stamped immediately beneath ~~his~~ **the witness's** signature or the signature itself is printed, typewritten, or stamped;
- (3) the name of each notary public whose signature appears on the instrument is legibly printed, typewritten, or stamped immediately beneath ~~his~~ **the notary's** signature or the signature itself is printed, typewritten, or stamped; and
- (4) the name of each person who executed the instrument appears identically in the body of the instrument, in the acknowledgment or jurat, in ~~his~~ **the person's** signature, and beneath ~~his~~ **the person's** signature;

or if subsection (d) is complied with.

(d) The recorder may receive for record an instrument that does not comply with subsection (c) if:

- (1) a printed or typewritten affidavit of a person with personal knowledge of the facts is recorded with the instrument;
- (2) the affidavit complies with this section;
- (3) the affidavit states the correct name of a person, if any, whose signature cannot be identified or whose name is not printed, typewritten, or stamped on the instrument as prescribed by this section; and
- (4) when the instrument does not comply with subsection (c)(4), the affidavit states the correct name of the person and states that each of the names used in the instrument refers to the person.

(e) The recorder ~~may~~ **shall** record a document presented for recording or a copy produced by a photographic process of the document presented for recording if:

- (1) the document complies with other statutory recording requirements; and
- (2) the document or copy will produce a clear and unobstructed

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copy.

All copies accepted for recording shall be marked as copies by the recorder.

(f) An instrument, document, or copy received and recorded by a county recorder is conclusively presumed to comply with this section. **The copy has the same effect as if the original document had been recorded.**

SECTION 10. IC 36-3-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Liens for taxes levied by the consolidated city are perfected when ~~certified to the auditor of the county.~~ **evidenced on the tax duplicate in the office of the treasurer of the county.**

(b) Liens created when the city enters upon property to make improvements to bring it into compliance with a city ordinance, and liens created upon failure to pay charges assessed by the city for services shall be certified to the auditor, after the adoption of a resolution confirming the incurred expense by the appropriate city department, board, or other agency. In addition, the resolution must state the name of the owner as it appears on the township assessor's record and a description of the property. ~~These liens are perfected when certified to the auditor.~~

(c) The amount of a ~~perfected~~ lien shall be placed on the tax duplicate by the auditor in the nature of a delinquent tax subject to enforcement and collection as otherwise provided under IC 6-1.1-22, IC 6-1.1-24, and IC 6-1.1-25. However, the amount of the lien is not considered a tax within the meaning of IC 6-1.1-21-2(b) and shall not be included as a part of either a total county tax levy under IC 6-1.1-21-2(g) or the tax liability of a taxpayer under IC 6-1.1-21-5 for purposes of the tax credit computations under IC 6-1.1-21-4 and IC 6-1.1-21-5."

Page 5, after line 29, begin a new paragraph and insert:

"SECTION 11. **An emergency is declared for this act.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 446 as reprinted February 16, 2004.)

HINKLE, Chair

Committee Vote: yeas 10, nays 0.

ES 446—LS 7745/DI 103+



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